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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,337	03/29/2004	Bill J. Peck	10040506-1	5083
22878 7590 10/28/2008 AGILENT TECHNOLOGIES INC. INTELLECTUAL PROPERTY ADMINISTRATION,LEGAL DEPT. MS BLDG. E P.O. BOX 7599 LOVELAND, CO 80537				
EXAMINER				
FORMAN, BETTY J				
ART UNIT		PAPER NUMBER		
1634				
NOTIFICATION DATE		DELIVERY MODE		
10/28/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/813,337

Applicant(s)

PECK ET AL.

Examiner

BJ Forman

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): the amendments overcome the previous objections.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1,3-7,9-11,14-16 and 28-37

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____

/BJ Forman/
Primary Examiner, Art Unit 1634

Continuation of 11, does NOT place the application in condition for allowance because:

Regarding the rejection under 35 U.S.C. 112, second paragraph, applicant argues that there is no ambiguity as to how the angles of Claims 30-33 are drawn. The argument has been considered. However, it is maintained that the angles are unclear, it is especially unclear how the plane of the flow cell AND the horizontal plane of the environment are both at least 30 degrees as claimed. The rejection is maintained.

Regarding the rejection under 35 U.S.C. 103, Applicant acknowledges that Anderson overcome the problems of incompatible reagents, but asserts that one of ordinary skill would have no reason to combine the teaching of Anderson with Bass '669. Applicant argues that Bass teaches pulse jetting reagents onto a substrate and then exposing the substrate to fluids in a flood station, but is silent regarding fluid displacement. Applicant argues that in contrast to Bass, Anderson teaches a rotor for fluid introduction and batch synthesis. From this, Applicant concludes that the methods of Bass and Anderson are completely different and provide no reason for their combination. The argument has been considered but is not found persuasive. First, Bass is also interested in batch synthesis, the difference being that Bass synthesizes a plurality of batches at each address (Column 3, lines 28-49). Furthermore, the flood station of Bass is flooded with the same reagents as used by Anderson, which Anderson teaches are expensive and more efficiently removed via displacement (Column 3, lines 54-59). It is maintained that the combined teaching of Anderson and Bass obviate the instant invention.

Applicant further asserts that the combination would place the substrate in Bass in a rotor/centrifuge of Anderson resulting in a damaged substrate thereby rendering the combination inoperable. The Argument is not found persuasive. First, Applicant has not provided any evidence of inoperability. As such, the argument is deemed unsupported arguments of counsel. Second, the teaching of Anderson is not limited to rotor/centrifuge, but also includes a "column at rest" (Abstract and Column 5, lines 29-30). Hence, the combination of Anderson and Bass would not lead to a damaged substrate as asserted by Applicant.

Applicant further points to various prior art references wherein the substrate is dried between steps. The argument has been considered but is not relevant because it cannot negate the teaching of Anderson.

Applicant presents the same arguments for Bass '180 as discussed above regarding Bass '669. The arguments have been considered but are not found persuasive for the reasons stated above.